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EDITOR'S NOTE

Impediments to the delivery of medical services often have important ramifications beyond the medical profession. It is therefore not surprising that various proposed responses to the medical malpractice crisis have been extensively debated by public and legislative forums. The crisis has arisen from a dramatic increase in the number of claims filed, the size of recoveries, and the cost of malpractice insurance premiums. This trend has convinced many observers that the traditional approach of resolving malpractice liability through tort law is inadequate and has engendered enmity between the medical and legal professions. Unfortunately, although there is general agreement that a crisis is at hand, no consensus as to what should be done about it has emerged.

This issue of the Maryland Law Review features a symposium on the medical malpractice crisis. The four articles were developed from papers presented at a conference held at the University of Maryland School of Law in November, 1975. This conference, "The Medical Malpractice Crisis: Managing the Costs," was sponsored by the University of Maryland School of Law in association with the University of Maryland and The Johns Hopkins University Medical Schools.

In our first article, Professor Kenneth Abraham surveys the reforms that have been proposed for the medical malpractice liability system. He discusses the efficacy of each proposed reform and its cost in terms of both economic practicality and the sacrifice of competing policies. His insightful analysis of the complexities of the various reforms should prove useful to anyone interested in understanding the extent of the medical malpractice problem.

The remaining articles deal with three proposed options to the reliance on tort principles to resolve medical malpractice claims and to guarantee quality medical care; these are arbitration, no-fault insurance, and the professional standards review organization (PSRO). In our second article, Mr. Duane Heintz of the Iowa Hospital Association presents an empirical study of an arbitration program for medical malpractice claims used by a group of southern California hospitals between 1970 and 1975. Mr. Heintz's work is the most thorough study to date of the application of arbitration to medical malpractice in the hospital environment; the data describe such various aspects of the claims resolution process as the time expended per claim, the size of the recoveries, the size of settlements, and the cost of closing a claim. This information should help in evaluating the arguments of those who advocate arbitration as a comprehensive solution to the problems of the current tort based system.

The third article is by Professor Jeffrey O'Connell of the University of Illinois School of Law, who is one of the leading proponents of no-fault insurance. Professor O'Connell suggests that a no-fault approach could significantly reduce the cost of claims resolution. Furthermore, although acknowledging that statutory authorization would facilitate the implementation of a no-fault system, he argues that a no-fault system established through private agreement could be effective as well. In our final article, Dr. John Ball examines the use of PSRO as a method of ensuring the quality of medical services. He contends that PSRO could control the quality of medical care more effectively than can the current tort system. If PSRO assumes the responsibility for quality assurance, reformers could concentrate their efforts on such other functions of the medical malpractice system as compensation and physician discipline.

Our first student piece considers whether the 1970 Clean Air Amendments authorize the EPA Administrator to compel state governments to cooperate in the enforcement of federal programs designed to control air pollution. Four United States Courts of Appeals considered this question and reached different conclusions on both statutory and constitutional grounds. Three of these cases have been consolidated and are now before the Supreme Court. An investigation of the amendments and their legislative history has failed to uncover any statutory authority to support this assertion of extraordinary power by federal authorities. Furthermore, in *National League of Cities v. Usery*,¹ a decision rendered subsequent to the four circuit court opinions, the Supreme Court indicated that federal commerce legislation may not transgress the sovereignty of the states. This comment should provide a useful background for understanding the forthcoming Supreme Court decision.

The law of defamation has long been mired in obscure common law terminology and a confusion of standards. The outcome of a particular case often has turned on such "Merlinesque touchstones"² as libel per se and libel per quod, which are vestiges of English common law pleading. Our second student piece deals with two recent cases in which the Maryland Court of Appeals attempted to simplify the law of defamation in Maryland. Taking its inspiration from the decision of the Supreme Court in *Gertz v. Robert Welch, Inc.*,³ the Court of Appeals discarded the common law categories in favor of a fault based system whereby damages are recoverable only upon proof of actual loss.

1. 96 S. Ct. 2465 (1976).

2. *Sauerhoff v. Hearst Corp.*, 388 F. Supp. 117, 119 (D. Md. 1975) (Kaufman, J.).

3. 418 U.S. 323 (1974).

An intelligible approach to defamation is an attractive prospect, but the decisions of the Court of Appeals may have the unexpected result of making recovery by private plaintiffs more difficult.

Our third student comment addresses the question whether the Maryland doctrine of sovereign immunity in tort should be modified. Although the Maryland Court of Appeals has adamantly refused to change the immunity doctrine in any respect, there are compelling policy considerations that make legislative action desirable. The author identifies these policy concerns and suggests several statutes that could more equitably accommodate the state's interest in immunity and the tort victim's need for compensation. Finally, there are two recent decisions, each dealing with a Supreme Court decision from the last term. *Hills v. Gautreaux*,⁴ which held that an interdistrict remedy for a constitutional violation may be appropriate in certain circumstances, is the subject of our first recent decision; *Franks v. Bowman Transportation Co.*,⁵ which addressed the availability of constructive seniority as a remedy for Title VII violations, is the subject of our second.

We thank the Council on Law-Related Studies, the Commonwealth Fund, The Johns Hopkins University School of Medicine, The University of Maryland at Baltimore, and The Maryland Medical Practice Committee for their support of both the Medical Malpractice Conference and this issue of the Maryland Law Review. We also thank Professor Kenneth Abraham for his work in organizing the conference and the symposium.

4. 96 S. Ct. 1538 (1976).

5. 96 S. Ct. 1251 (1976).

The following students have contributed Comments to this issue:

Gary M. Kelly

Nancy Gregor Frame

Steven O. Frenkil

The following students have contributed Recent Decisions to this issue:

Julien A. Hecht

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